

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	X
BASIL SEGGOS, as Commissioner of the New York	:
State Department of Environmental Conservation and	:
Trustee of New York State’s Natural Resources, and the	:
STATE OF NEW YORK,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
THOMAS DATRE, JR. et al.,	:
	:
Defendants.	:
-----	X

Plaintiffs Basil Seggos, as Commissioner of the New York State Department of Environmental Conservation (“DEC”) and Trustee of New York State’s Natural Resources, and the State of New York (together “the State”) and twenty of the defendants¹ in this action (collectively, “Parties”) submit this joint proposed discovery schedule pursuant to Magistrate Judge Lindsay’s Order dated August 6, 2019. The Parties met and conferred about a discovery schedule on August 14, 2019. Eleven defendants, including nine defendants regarding whom the Clerk of Court issued a certificate of default, did not participate in the meet and confer.² No appearances have been entered for two defendants after their attorneys withdrew as counsel, and

¹ Those twenty defendants are IEV Trucking Corp.; COD Services Corp.; All Island Masonry & Concrete, Inc.; Building Dev Corp.; Dimyon Development Corp.; New Empire Builder Corp.; Cipriano Excavation Inc.; Touchstone Homes LLC; New York Major Construction Inc.; M & Y Developers Inc.; Atria Builders, LLC; Plus K Construction Inc.; Monaco Construction Corp.; Alef Construction Inc.; 158 Franklin Ave. LLC; ILE Construction Group, Inc.; East End Materials, Inc.; Sparrow Construction Corp.; Daytree at Cortland Square Inc.; and East Coast Drilling NY Inc.

² The defendants regarding whom the Clerk of Court issued a certificate of default are Christopher Grabe; Sam’s Rent, Inc.; Sukram & Sons Ltd.; Woori Construction Inc.; NY Finest Enterprises Inc.; Luciano’s Construction, Inc.; Ciano Concrete Corp.; Freedom City Contracting Corp.; and Total Structure Services Inc. See ECF No. 238. The other two defendants that did not meet and confer with the State are Triton Construction Company, LLC and Sams Rent and Construction.

those defendants also did not participate in the meet and confer.³ *See* ECF No. 338 (Order granting attorneys' motion to withdraw). The remaining defendant has been dismissed from the case.⁴ *See* ECF No. 230.

The Parties propose the following discovery schedule:

A. Subjects of Discovery. Limited discovery shall proceed within the scope set forth in the Court's Order dated August 5, 2019: "development of facts necessary to decide whether the [Comprehensive Environmental Response, Compensation, and Liability Act] claim was timely filed, including *inter alia*, the dates of closure of [Roberto Clemente] Park, the reasons for such closure(s), and the timing and extent of the State's awareness or knowledge of the release of hazardous substances at the site and of the effect of that release on the use of the Park." ECF No. 386 at pp. 9-10.

B. Discovery Schedule. Discovery shall be completed by October 21, 2019 pursuant to the Court's August 5 Order. *Id.* at p. 10. The following interim discovery deadlines shall also apply:

- i. Written discovery requests shall be served by email by August 21, 2019. Defendants shall endeavor to serve a single omnibus set of requests to the State. The Parties reserve the right to serve additional discovery requests.
- ii. Any objections to document requests shall be served by email by September 4, 2019.
- iii. The State proposes that the Parties complete production of documents

³ Those defendants are Thomas Datre, Jr. and 5 Brothers Farming Corp.

⁴ That defendant is "John Doe."

responsive to initial requests and respond to any other written discovery requests by September 20, 2019. Some defendants propose that documents be produced by September 11, 2019 in light of the outside deadline for limited discovery set by the Court. The State believes its slightly longer timeline is reasonable because the State will need to confirm potential DEC custodians of documents requested by defendants once the State receives those requests, instruct those custodians to search their hard-copy and electronic files for responsive documents, and then review those documents for responsiveness and privilege. In addition, the Parties have agreed to produce documents on a rolling basis, so defendants will receive responsive documents in tranches as responsive documents are identified by the State.

- iv. The Court's August 5th Order requires that depositions shall be completed by October 21, 2019. The Parties will determine how many depositions they intend to take after their review of discovery.

B. Production of Electronically-Stored Information. The identification and collection of electronic documents will be directly supervised by counsel and/or third-party vendors for the Parties, and the Parties agree to collect and produce electronic documents in a manner that preserves the customary fields of metadata intact. Where reasonably feasible, the Parties will produce electronic documents in TIFF format with Opticon/Concordance load files. The productions shall contain the "extracted text" of the electronic documents, as well as the customary fields of metadata. The Parties agree that certain electronic document formats, such as .XLS spreadsheets and other formats that the Parties shall agree upon, shall not be

produced in TIFF format, but instead will be produced in “native” format, with a “click-through” link in the respective Concordance database. Where the Parties determine that the foregoing manner of production set forth in this paragraph is not reasonable or feasible in proportion to the number of documents that would be produced or the costs that would be incurred with such a production, or in light of the limited scope of discovery, the Parties will produce electronic documents in another agreed-upon electronic and searchable form. The Parties will cooperate in determining the appropriate scope of production, including, without limitation, cooperation regarding the date ranges of relevant documents, identification of custodian files to be searched, and search terms to be used.

C. Notice of Third-Party Subpoenas. In accordance with Fed. R. Civ. P. 45(a)(4), any Parties serving third-party subpoenas shall provide notice of such subpoenas to the other Parties to this action and provide the other Parties a copy of all documents produced pursuant to the subpoenas.

Dated: August 21, 2019

LETITIA JAMES
Attorney General of the State of New York
Attorney for Plaintiffs

By: /s/ Channing Wistar-Jones
Assistant Attorney General
Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, New York 10005
(212) 416-8082
channing.jones@ag.ny.gov

SIVE, PAGET & RIESEL P.C.
Attorneys for Atria Builders, LLC

By: /s/ Elizabeth Knauer
560 Lexington Avenue, 15th Floor
New York, New York 10022
Tel: (212) 421-2150
Fax: (212) 421-1891
Email: eknauer@sprlaw.com

LAW OFFICE OF WILLIAM A. RUSKIN, PLLC
*Attorneys for New York Major Construction Inc. and
M & Y Developers Inc.*

By: /s/ William A. Ruskin
800 Westchester Avenue, Suite N-641
Rye Brook, New York 10573-1360
Tel: (914) 231-0360
Fax: (914) 231-0361
Email: wruskin@wruskinlaw.com

CERMELE & WOOD LLP
Attorneys for East Coast Drilling NY Inc.

By: /s/ Michael R. Wood
2 Westchester Park Drive, Suite 110
White Plains, New York 10604
Tel: (914) 967-2753
Fax: (914) 967-2754
Email: mike@cw.legal

HOGAN & CASSELL LLP
Attorneys for IEV Trucking Corp.

By: /s/ Michael D. Cassell
500 North Broadway, Suite 153
Jericho, New York 11753
Tel: (516) 942-4700
Email: mcassell@hogancassell.com

DESENA & SWEENEY LLP
Attorneys for New Empire Builder Corp.

By: /s/ Paul J. Felicione
1500 Lakeland Avenue
Bohemia, NY 11716
Tel: (631) 360-7333
Email: pjfesq@dslawny.com

COHEN & GRESSER LLP
Attorneys for Building Dev Corp. and Dimyon Development Corp.

By: /s/ Nathaniel P.T. Read
800 Third Avenue
New York, New York 10022
Tel: (212) 957-7600
Email: nread@cohengresser.com

STEIN ADLER DABAH & ZELKOWITZ LLP
Attorneys for ILE Construction Group, Inc.

By: /s/ Jacob E. Lewin
1633 Broadway, 46th Floor
New York, New York 10019
Tel: (212) 867-5620
Email: jlewin@steinadlerlaw.com

LAW OFFICE OF LEO SALZMAN
Attorneys for Alef Construction Inc. and 158 Franklin Ave. LLC

By: /s/ Leo Salzman
2116 Avenue J
Brooklyn, NY 11210
Tel: (718) 338-3183
Fax: (718) 252-5536
Email: leo@salzmanesq.com

THE LAW OFFICE OF MARK E. NADJAR, P.C.
Attorneys for Cipriano Excavation Inc.

By: /s/ Mark Ewald Nadjar, Esq._____
366 Veterans Memorial Hwy.
Commack, New York 11725
Tel: (631) 385-8900
Fax: (631) 543-5899
Email: marknadjar@optonline.net

JASPAN SCHLESINGER LLP
Attorneys for COD Services Corp.

By: /s/ Christopher E. Vatter_____
300 Garden City Plaza, 5th Floor
Garden City, New York 11530
Tel: (516) 746-8000
Fax: (516) 393-8282
Email: cvatter@jaspanllp.com

PIANA & GIOE
Attorneys for All Island Masonry & Concrete, Inc.

By: /s/ Jack Piana_____
1200 Veterans Memorial Highway, Suite 360
Hauppauge, New York 11788
Tel: (631) 232-3700
Fax: (631) 232-3702
Email: jpiana@pianagioe.com

CAMPANELLI & ASSOCIATES, P.C.
Attorneys for Daytree at Cortland Square Inc.

By: /s/ Amanda R. Disken_____
1757 Merrick Avenue, Suite 204
Merrick, New York 11566
Tel: (516) 746-1600
Fax: (516) 746-2611
Email: ard@campanellipc.com

BARBARA ALBOM
Attorney for East End Materials, Inc.

By: /s/ Barbara Albom
166 Mercer Street - Suite 3A
New York, New York 10012
Tel: (212) 966-5253
Fax: (212) 941-8566
Email: balbom@optonline.net

THE LAW OFFICE OF OLGA VINOGRADOVA, P.C.
Attorneys for Plus K Construction Inc.

By: /s/ Olga Vinogradova
17 Broadway, Floor 21
New York, New York 10019
Tel: (212) 826-1108
Email: olga@vinogradovalaw.com

PERICONI, LLC
Attorneys for Monaco Construction Corp. and Sparrow Construction Corp.

By: /s/ James J. Periconi
260 Madison Avenue, 15th Floor
New York, New York 10016
Tel: (212) 213-5500
Fax: (212) 448-0067
Email: jpericoni@periconi.com

- and -

SAHN WARD COSCHIGNANO
Attorneys for Touchstone Homes LLC

By: /s/ Miriam E. Villani
333 Earle Ovington Boulevard, Suite 601
Uniondale, New York 11553
Tel: (516) 228-1300
Fax: (516) 228-0038
Email: mvillani@swc-law.com